



MISSOURI DEPARTMENT OF MENTAL HEALTH

DORN SCHUFFMAN, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
7.350

CHAPTER Community Placement and Licensing	SUBCHAPTER Placement Appeal Procedures	EFFECTIVE DATE 7/1/06	NUMBER OF PAGES 4	PAGE NUMBER 1 of 4
SUBJECT Appeal if No Consent to Placement from Mental Retardation Facilities		AUTHORITY Section 630.050, RSMo		HISTORY See Below
PERSON RESPONSIBLE Director, MRDD			SUNSET DATE 7/1/09	

PURPOSE: Prescribes appeal procedures required by state law if mental retardation facility determines placement is appropriate but consent not obtained.

APPLICATION: Applies to mental retardation facilities operated by the department.

(1) If a resident, minor resident's parent or a resident's legal guardian refuses to consent to placement as described in 633.135 RSMo, then the head of the mental retardation facility shall request the resident, parent or guardian to explain to the facility in writing the reasons for the refusal on DMH Form 8136.

(2) If consent is not obtained, with or without specified reasons, the head of the mental retardation facility shall personally review the resident's file and reasons for the refusal, if given. The head of the facility may also consult with the same or another interdisciplinary team or other staff members regarding the appropriateness of the referral for placement.

(A) The head of the facility shall either withdraw the referral for placement or petition the director of the division of mental retardation and developmental disabilities to determine whether placement in one or more residential facilities is appropriate under the criteria set out in section (7) of this DOR.

(B) If the head of the facility petitions the division director, the head of the facility shall complete pertinent portions of the "Placement Appeal Flow Sheet," DMH Form 8137 and shall send the form with the petition.

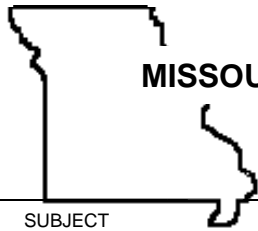
(3) After personal review of the petition and placement documentation and consultation, if necessary, the division director shall determine whether the placement proposed in one or more facilities is appropriate under the criteria set out in section (7) of this DOR. The division director shall dispose of the petition as follows:

(A) The division director shall either withdraw the referral, if deemed in appropriate, or refer the petition and documentation to the chairman of the State Advisory Council on Mental Retardation and Developmental Disabilities for review and recommendations.

(B) If the petition is referred, the division director shall complete pertinent portions of DMH Form 8137 and send it with the referral.

(C) If the petition is referred, the division director shall mail a notice of the institution of the appeal, a copy of the petition, and a copy of the documentation supporting the petition to the resident, minor resident's parent or resident's legal guardian.

(4) After the chairman of the State Advisory Council on Mental Retardation and Developmental Disabilities has received the referral, the chairman shall appoint and convene a review panel to conduct a hearing and recommend findings of fact,



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conclusions of law, and decision to the director of the department under the criteria set out in section (7) of this DOR.

(A) The chairman of the State Advisory Council shall appoint three persons to the review panel. At least one member of the panel shall be a parent or guardian of a resident who resides in a Department of Mental Health facility. The remaining members of the panel shall be persons:

1. who are from non-governmental organizations or groups concerned with prevention of mental retardation and evaluation, care and habilitation of mentally retarded persons; and

2. who are familiar with services and service needs of residents in mental retardation facilities operated by the department.

(B) No member of the panel shall be an officer or employee of the department. The chairman of the State Advisory Panel shall complete pertinent portions of the DMH Form 8137 to indicate the appointment.

(5) The notice and procedure requirements for the hearing by the panel shall be in accordance with Chapter 536, RSMo, including the following:

(A) The division director shall assign a caption and number to the case.

(B) The division director shall set the time and place for the hearing by coordinating this with the members of the review panel.

(C) The division director shall mail a notice of hearing to the head of the facility and the resident, minor resident's parent or resident's legal guardian by registered mail, return receipt requested. The notice shall be given on DMH Form 8138 at least fifteen (15) days before the date of the hearing. If an attorney has entered an appearance on behalf of the resident, minor resident's parent or resident's legal guardian, the division director shall send a copy of the notice to the attorney.

(D) The head of the facility shall have the burden to demonstrate by a preponderance of evidence that the proposed placement is appropriate under criteria set out in section (7) of this DOR.

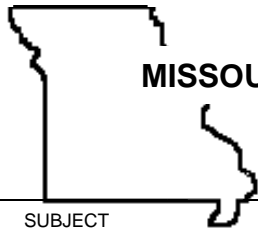
(E) The division director shall arrange to have the hearing electronically recorded for purposes of obtaining a transcript.

(6) The review panel shall forward the tape recording, recommended findings of fact, recommended conclusions of law and recommended decision to the department director who shall promptly enter the findings of fact, conclusions of law and final decision. The department director shall send notice of the decision to the resident, minor resident's parent or resident's legal guardian by registered mail, return receipt requested.

(7) The criteria for determining whether the proposed placement is appropriate is as follows:

(A) As set out in section 630.610, RSMo, a comprehensive evaluation and individualized habilitation plan must indicate the following:

1. the resident is mentally retarded or developmentally disabled, and
2. the resident needs special care, treatment or habilitation services including room or board, or both.



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(B) As set out in section 630.615, RSMo, the proposed placement meet the following criteria:

1. it is in the best interest of the resident;
2. it is the least restrictive environment for providing care and treatment consistent with the needs and conditions of the resident;
3. the individual degree and treatment which is required for the resident is of comparable quality to the existing care and treatment provided in the mental retardation facility based upon the department's investigation of the alternative placement and its program of care and treatment;
4. it would maintain relationships of the resident to family, guardian or friends and encourage their beneficial visits to the resident.

(C) As set out in section 630.620, RSMo, the facility has consulted with the resident, minor resident's parent, or resident's legal guardian and the proposed placement facility is one of the following:

1. A facility licensed by the department of social services under Chapter 198, RSMo, and licensed or certified, or both by the department;
2. A facility licensed or certified, or both, by the department, or
3. The home of the resident.

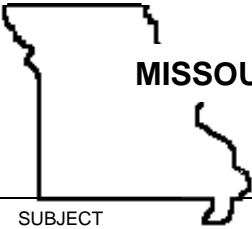
(8) The regional center shall not place or discharge the resident from the mental retardation facility until the decision of the department director or the court if the director's decision as appealed becomes final. The decision of the department director becomes final thirty-one (31) days after the notice of the decision is mailed to the resident, resident's parent, legal guardian or attorney. The decision of the court becomes final forty-one (41) days after the date of the court's decision.

(9) As set out in Chapter 536, RSMo, the resident, minor resident's parent or legal guardian may appeal the decision of the director.

(10) If the director or the court, if the director's decision is appealed, decides that the resident should be placed and the resident, minor resident's parent or resident's legal guardian does not consent to the placement in the same or similar residential facility, the mental retardation facility shall discharge the resident and the regional center shall offer support services. If consent is obtained, the resident shall be placed in the same or similar residential facility.

(11) If the director or court determines that the proposed placement is not appropriate under section 633.135, the resident shall remain in the mental retardation facility until a change occurs in the resident's condition or the availability of appropriate placement facilities at which time the mental retardation facility may initiate a new placement referral.

(12) The department shall not retaliate against any state employee as a result of the appeal of a good faith decision to place the resident including an employee who testifies during the hearing or otherwise provides information or evidence in regard to a proposed placement.



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History: Original DOR Effective October 15, 1981. Amendment effective July 1, 1996. Amendment effective July 1, 2002. On July 1, 2003 the sunset date was extended to July 1, 2004. On July 1, 2004 the sunset date was extended to July 1, 2005. On July 1, 2005 the sunset date was extended to July 1, 2006. On July 1, 2006 the sunset date was extended to July 1, 2009.